APPENDIX A

Order of the District Court

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2419-71

NEW YORK STATE, on behalf of New York, Bronx and Kings Counties,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

N.A.A.C.P., NEW YORK CITY REGION OF NEW YORK STATE CONFERENCE OF BRANCHES, *et al.,*

Applicants for Intervention.

This matter came before the Court on Motion by plaintiff, New York State, for Summary Judgment, a response by defendant, United States of America, consenting to the entry of such judgment, and a Motion to Intervene as party defendants by the N.A.A.C.P., New York City Region of New York State Conference of Branches, et al.

Upon consideration of these Motions, the memoranda of law submitted in support thereof, and opposition thereto, it is by the Court, this 12th day of April 1972,

ORDERED that said Motion to Intervene as party defendants by N.A.A.C.P., New York City Region of New York

State Conference of Branches, et al. should be and the same hereby is denied, and it is

FURTHER ORDERED that the Motion for Summary Judgment by plaintiff, New York State, should be and the same hereby is granted.

/s/ EDWARD ALLEN TAMM
/s/ WILLIAM B. JONES
/s/ JUNE GREEN

FILED

APRIL 13, 1972

JAMES F. DAVEY, Clerk

Judgment of the District Court

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2419-71

NEW YORK STATE, on behalf of New York, Bronx and Kings Counties,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

N.A.A.C.P., NEW YORK CITY REGION OF NEW YORK STATE CONFERENCE OF BRANCHES, *et al.,*

Applicants for Intervention.

Before TAMM, Circuit Judge, JONES and GREEN, District Judges.*

ORDER

The Motion of N.A.A.C.P., New York City Region of New York State Conference of Branches, et al., to Alter the Judgment of the Court in this action, entered April 12, 1972, denying their Motion to Intervene as party defendants and granting plaintiff New York State's Motion for Summary Judgment, having come before the Court at this time; and having considered the memoranda, affidavits

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*GREEN, District Judge, did not participate in this decision.

and exhibits submitted in support of the Motion to Alter Judgment, the Court enters the following Order pursuant to Local Rule 9(f), as amended January 1, 1972.

Wherefore, it is this 25th day of April, 1972.

ORDERED: That the Motion of N.A.A.C.P., et al., to Alter the Judgment of the Court in this action be and the same is hereby denied.

/s/ EDWARD ALLEN TAMM
Circuit Judge
/s/ WILLIAM B. JONES
District Judge

Notice of Appeal

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Civil Action No. 2419-71

NEW YORK STATE, on behalf of New York, Bronx, and Kings Counties,

Plaintiff,

—against—

UNITED STATES OF AMERICA,

Defendant,

N.A.A.C.P., etc., *et al.*,

Applicants for Intervention.

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the N.A.A.C.P., New York City Region of New York State Conference of Branches, Antonia Vega, Simon Levine, Samuel Wright, Waldaba Stewart and Thomas R. Fortune, applicants for intervention in the above mentioned action, hereby appeal to the Supreme Court of the United States from the final order entered in this action on April 13, 1972, denying applicants' application for intervention and granting a declaratory judgment in favor of the plaintiff and the final order entered in this action on April 25, 1972, denying applicants' motion to alter judgment.

This appeal is taken pursuant to 42 U.S.C. §1973b(a).

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APPENDIX B

Memorandum of the United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 2419-71

NEW YORK STATE on behalf of NEW YORK, BRONX and KINGS COUNTIES, political subdivisions of said State,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANT'S MEMORANDUM AND AFFIDAVIT IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Based on the facts set forth in the affidavits attached to plaintiff's Motion for Summary Judgment and the reasons set forth in the attached affidavit of David L. Norman, Assistant Attorney General, the United States hereby consents to the entry of a declaratory judgment under Section 4(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973 b (a)).

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DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

Affidavit of the Assistant Attorney General

DISTRICT OF COLUMBIA,
CITY OF WASHINGTON,

DAVID L. NORMAN, having been duly sworn, states as follows:

My name is David L. Norman. I am Assistant Attorney General, Civil Rights Division, Department of Justice. I make this affidavit in response to the plaintiff's Motion for Summary Judgment in the case of *New York State* v. *United States of America*, Civil Action No. 2419-71, United States District Court for the District of Columbia. I am familiar with the Complaint filed by the plaintiff and with the Answer filed by the United States herein.

Following the filing of the Complaint, the United States, pursuant to the requirements of Section 4(a) of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973b(a)), undertook to determine if the Attorney General could conclude that he has no reason to believe that the New York State literacy test has been used in the counties of New York, Bronx and Kings during the preceding 10 years for the purpose or with the effect of denying or abridging the right to vote on account of race or color, and thereby consent to the judgment prayed for. At my direction, attorneys from the Department of Justice conducted an investigation which consisted of examination of registration records in selected precincts in each covered county, interviews of certain election and registration officials and interviews of persons familiar with registration activity in black and Puerto Rican neighborhoods in those counties.

I have reviewed and evaluated the data obtained through this investigation in light of the statutory guidelines set forth in Section 4(a) and (d) of the Voting Rights Act of

1964 (42 U.S.C. 1973b (a) and (d)). In my judgment the following facts are relevant to the issue of whether the New York literacy test "has been used during the ten years preceding the filing of [this] action for the purpose or with the effect of denying or abridging the right to vote on account of race or color" and to the question of whether the Attorney General should determine "that he has no reason to believe" that the New York literacy test has been used with the proscribed purpose or effect:

1. New York presently has suspended all requirements of literacy as a condition of registration and voting as required by the 1970 Amendments to the Voting Rights Act. Our investigation revealed no allegation by black citizens that the previously enforced literacy test was used to deny or abridge their right to register and vote by reason of race or color.

2. Section 4(e) of the Voting Rights Act of 1965 modified the New York English language literacy requirements by providing that the literacy requirement could be satisfied by proof of attendance through the sixth grade at any American-flag school, including those in Puerto Rico. This Act was passed on August 6, 1965 and was finally upheld by the United States Supreme Court (*Katzenbach* v. *Morgan*, 384 U.S. 641) on June 16, 1966. Our investigation indicated that the implementation of this provision through the use of Spanish language affidavits was not completed until the fall of 1967.

The supplemental affidavit of Alexander Bassett dated March 30, 1972, indicates that New York authorities took significant interim steps to minimize any adverse impact resulting from the delay in making available Spanish

language affidavits. Our investigation did not reveal any individual citizens whose inability to register is attributable to the absence of Spanish language affidavits.

3. The 1970 Amendments to the Voting Rights Act suspended in all jurisdictions any use of literacy tests or devices. These Amendments were effective on June 22, 1970, and were upheld by the United States Supreme Court (*Oregon* v. *Mitchell*, 400 U.S. 112), in December 1970. Our investigation included a sampling of registration records in 21 election districts in the three covered counties. While there is no evidence that the state continued to require a formal literacy test after the Act (except in isolated cases), in each election district examined, a significant percentage of those registration applications examined after June 1970 bear a notation that some proof of literacy was recorded.

The supplemental affidavit of Alexander Bassett indicates that New York authorities took reasonable steps to notify all registration workers of the suspension of all literacy requirements and that notations of proof of literacy resulted from either (a) obtaining such proof contingently in the event the courts ruled in New York's favor in the challenge of the literacy suspension or (b) isolated instances where individual registration officials continued to obtain literacy contrary to official instructions.

Based on the above findings I conclude, on behalf of the Acting Attorney General that there is no reason to believe that a literacy test has been used in the past 10 years in the counties of New York, Kings and Bronx with the purpose or effect of denying or abridging the right to vote on account of race or color, except for isolated instances

which have been substantially corrected and which, under present practice cannot reoccur.

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DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

Sworn to and subscribed
before me this 3rd day
of April 1972

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Notary Public
My commission expires